

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

OCT 25 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

MARK ORTEGA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

SIENNA MARKETING & CONSULTING,
INC. a New York Corporation,

Defendant.

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Case No. 5:24-Cv-00487-OLG

**PLAINTIFF'S REPLY IN OPPOSITION TO MOTION FOR
LEAVE TO WITHDRAW AS COUNSEL**

COMES NOW, Plaintiff, Mark Ortega, and files this Reply in Opposition to Motion for Leave for Attorney Paulina Almanza and Almanza Terrazas PLLC to Withdraw as Counsel for Plaintiff ("Motion") (ECF. 16) filed by purported counsel Paulina Almanza and would show the Court the following:

Doubt as to Authenticity and Consent.

Plaintiff has serious concerns regarding the authenticity of the Motion and whether it represents the genuine and voluntary wishes of his attorney, Paulina Almanza. The details supporting Plaintiff's concerns are provided in the accompanied (**Exhibit A**)

Procedural Defects.

Plaintiff notes that the Motion contains procedural defects, including a failure to fully comply with Local Rule AT-3 regarding client consultation and consent. Specifically, the Motion fails to account for the client's explicit objection to the withdrawal as documented in an email from Plaintiff to Attorney Almanza on the morning of October 23, 2024. (**Exhibit E**). Moreover,

redacting Plaintiff's contact information violates the explicit requirements of Local Rule AT-3, which mandates the inclusion of such information when a successor attorney is not yet retained.

The Motion relies on unsubstantiated claims and omits crucial information about the alleged conflict, creating an incomplete and misleading record for the Court's consideration. The full extent of these irregularities is further documented in the accompanying sealed exhibits. **(Exhibit A)**

Lack of Proper Notice.

The "notice" provided to Plaintiff, attached as **Exhibit B**, is insufficient and does not constitute the reasonable notice required under the Texas Rules of Professional Conduct and Fifth Circuit precedent *In re Wynn*, 889 F.2d 644 (5th Cir. 1989). The letter contains numerous inconsistencies and demonstrably false statements, casting doubt on its legitimacy. These issues are detailed further in the accompanying sealed exhibits. **(Exhibit A)**

Prejudice to Plaintiff.

Granting the Motion would severely prejudice Plaintiff and the purported class members. Ms. Almanza possesses unique knowledge and expertise critical to Plaintiff's case. Requiring Plaintiff to secure new counsel at this stage would impose significant hardship, delay, and expense, potentially jeopardizing his ability to pursue his claims effectively. Further specifics regarding Plaintiff's ongoing legal cases and the prejudice that would arise from the requested withdrawal is attached as **Exhibit A** under seal.

Motion to Seal.

Concurrent with this filing, Plaintiff submits a Motion to Seal all attached exhibits, given the highly sensitive and private nature of their contents. The exhibits contain medical information,

attorney-client communications, confidential settlement negotiations, and details of an ongoing investigation, all of which require protection from public disclosure.

Request for Emergency Hearing


Plaintiff requests an emergency hearing due to the sensitive nature of this situation and the potential for irreparable harm.

WHEREFORE, Plaintiff respectfully requests that the Court DENY the Motion and grant an emergency hearing. Plaintiff further requests any and all other relief to which he may be justly entitled.

Respectfully submitted,

Mark Ortega

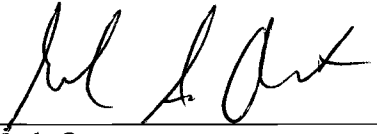
DATED this 25th day of October 2024.

A handwritten signature in black ink, appearing to read 'Mark Ortega', is written over a horizontal line.

Mark Ortega, Plaintiff
PO Box 702099
San Antonio, TX 78231
Telephone: 210-744-9663
Email: mortega@utexas.edu

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument has been properly delivered pursuant to the Texas Rules of Civil Procedure on October 25, 2024 to the following counsel of record:



Mark Ortega

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ORTEGA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

**SIENNA MARKETING & CONSULTING,
INC.** a New York Corporation,

Defendant.

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Case No. 5:24-CV-00487-OLG

[PROPOSED] ORDER DENYING MOTION FOR LEAVE TO WITHDRAW

Before the Court is the Motion for Leave For Attorney Paulina Almanza and Almanza Terrazas PLLC to Withdraw as Counsel For Plaintiff (“Motion for Leave to Withdraw as Counsel”) ECF No. 16 filed by purported counsel for Plaintiff, Paulina Almanza, and Plaintiff Mark Ortega's Reply in Opposition to the Motion, along with his Motion to Seal Exhibits. Having reviewed the Motion, Reply, and accompanying sealed exhibits *in camera*, the Court enters the following Order:

The Court finds that Plaintiff has raised serious and substantial questions regarding the authenticity and voluntariness of the Motion for Leave to Withdraw as Counsel. The evidence presented creates significant doubt as to whether the Motion reflects Ms. Almanza's true wishes.

Furthermore, the Court finds that granting the Motion to Withdraw would severely prejudice Plaintiff's interests by requiring him to secure new counsel at this stage of litigation, causing hardship, delay, and expense.

IT IS THEREFORE ORDERED that the Motion for Leave to Withdraw as Counsel (ECF No. 16) is hereby **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall send a copy of this Order to Plaintiff and to Paulina Almanza at Almanza's current address, but no copy shall be sent to opposing parties as *ex parte* relief has been granted on the motion.

IT IS FURTHER ORDERED that an evidentiary hearing is set for _____, 2024 at _____ to inquire into the circumstances surrounding the Motion for Leave to Withdraw as Counsel, Almanza's current capacity to provide legal representation, and the allegations of fraud and interference raised by Plaintiff.

Signed on _____, 2024.

JUDGE PRESIDING

EXHIBIT F

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Employment

Armani Izaay, Plaintiff,	Court File No. 27-CV-24-8709 Judge: Laurie J. Miller
Wendys, Defendant.	<u>DECLARATION OF ALYNNAH JOHNSON IN SUPPORT OF DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S REQUEST FOR DEFAULT JUDGMENT</u>

I, Alynna Johnson, declare as follows:

1. I am currently employed by Wendy's International, LLC ("Wendy's International"), as Specialist – Employment & Litigation for The Wendy's Company. In my role, I am familiar with the relationship between The Wendy's Company and its franchisees. I am also the individual that received notice of Plaintiff's Summons and Complaint that was mailed to Wendy's International.

2. The Wendy's Company is the parent company of a subsidiary holding company, Wendy's Restaurants, LLC ("Wendy's Restaurants"). Wendy's Restaurants is the parent company of Wendy's International, which in turn is the indirect parent company of Quality Is Our Recipe, LLC ("QIOR"), which is the franchisor entity of the Wendy's restaurant system in the United States.

3. Haza Foods of Minnesota, LLC and QIOR entered into a Franchise Agreement on November 13, 2017 ("Franchise Agreement"), excerpts of which are attached to this Declaration

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Employment

Armani Izaay,

Plaintiff,

Court File No. 27-CV-24-8709

Judge: Laurie J. Miller

Wendys,

Defendant.

DEFENDANT'S BRIEF
IN OPPOSITION TO PLAINTIFF'S
REQUEST FOR DEFAULT JUDGMENT

Haza Foods of Minnesota, LLC, d/b/a Wendy's ("Haza"), respectfully requests that this Court deny the request for default judgment submitted by Plaintiff Armani Izaay ("Plaintiff"). Plaintiff's request is procedurally improper and substantively unfounded, as no purported defendant has been effectively served in this case—and so cannot be determined to be in default.

BACKGROUND

Plaintiff filed his Complaint against "Wendys" on May 24, 2024, alleging that a store manager asked Plaintiff to perform a sex act in return for a position at the restaurant. Dkt. No. 1, Compl. Plaintiff alleges that this conduct occurred at the Wendy's restaurant located at 9624 Lyndale Ave. S., Bloomington, Minnesota. *Id.* Haza operates the restaurant as a franchisee within the Wendy's restaurant system.¹ Exhibit A, Johnson Decl. at ¶¶ 2-4.

¹ Haza's franchise agreement is with Quality Is Our Recipe, LLC ("QIOR"), the owner and franchisor of the Wendy's restaurant system in the United States. Exhibit A, Johnson Decl. at ¶ 2. QIOR is an indirect subsidiary of Wendy's International, LLC ("Wendy's International"), which in turn is a subsidiary of the Wendy's Restaurants, LLC, holding company. *Id.* The Wendy's Company is the publicly traded parent company of Wendy's Restaurants. *Id.* The Franchise Agreement between Haza and QIOR is dated November 13, 2017; under it, Haza is responsible for hiring employees and for the working conditions of the Lyndale Avenue restaurant. *Id.* at ¶ 3. Further, Haza is required to indemnify QIOR for "any and all claims arising directly or indirectly from ... or in connection with" the operation of the restaurant. *Id.* at ¶ 4.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

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Armani Izaay,

Plaintiff,

v.

Wendys,

Defendant.

Court File No. 27-CV-24-8709

Judge: Laurie J. Miller

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS

Haza Foods of Minnesota, LLC, d/b/a Wendy's ("Haza") moves to dismiss Plaintiff's Complaint against "Wendys" for naming the incorrect defendant, insufficient service or process, and failure to state a claim upon which may be granted.

INTRODUCTION

Haza operates the Wendy's restaurant identified in Plaintiff's Complaint. It does so under a franchise agreement with Quality is Our Recipe, LLC ("Quality"), which is the owner and franchisor of the well-known Wendy's restaurant system in the United States. Quality, in turn, is an indirect subsidiary of Wendy's International, LLC ("Wendy's International")—which itself is an indirect subsidiary of The Wendy's Company, the publicly traded parent company of the international restaurant system. Haza defends this action under an indemnification clause in its franchise agreement.

Plaintiff named "Wendys" as the defendant in this case. Yet "Wendys" is not a legal entity that can be sued, served, or be a party—a defect that the Court identified in its August 13, 2024, Order to Show Cause and that was apparent after Plaintiff filed various documents related to Wendy's International. (*See, e.g.*, Dkt. Nos. 10, 11.) Because "Wendys" is not an entity

STATE OF MINNESOTA
COUNTY OF HENNEPINDISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Employment

Armani Izaay,

Plaintiff,

Wendy's,

Defendant.

Court File No. 27-CV-24-8709

Judge: Laurie J. Miller

**AMENDED NOTICE OF MOTION
AND MOTION TO DISMISS**

TO: Armani Izaay, 505 Malcom Avenue, Apartment 308, Minneapolis, MN 55414.

PLEASE TAKE NOTICE that on December 17, 2024, at 1:00 p.m. before Judge Laurie J. Miller, Haza Foods of Minnesota, LLC, d/b/a Wendy's will move to dismiss Plaintiff Armani Izaay's Complaint pursuant to Minnesota Rule of Civil Procedure 12.02(b), (c), and (e). The grounds for Defendant's motion will be set forth in a memorandum of law in support of its motion to dismiss.

The hearing will be conducted by Zoom video conference, per the following login information:

<https://courts-state-mn.us.zoomgov.com/j/1600299708?pwd=Y0dxdndiSVFaQmxKYjB1MG5JQXZNdz09>**Meeting ID: 160 029 9708****Passcode: 665516**